

Clean Water Council Meeting Highlights September 10, 2002

Location

N.J. Environmental Infrastructure Trust, 3131 Princeton Pike, Lawrenceville, NJ

Attendees: Ferdows Ali, James Cosgrove, Russell Furnari, Amy Goldsmith, Pamela Goodwin, Chris Altomari, Helen Heinrich, Kerry Kirk Pflugh, Marybeth Koza, Todd Kratzer, Anthony McCracken, L.Mason Neely, Barry Sullivan, Ray Zabihach, Tony Russo, and Dan VanAbs.

Meeting today will be presided over by Pamela Goodwin, (Saul, Ewing, Remick and Saul) Vice Chair for CWC

Presentation by Debra Hammond

Debra Hammond,(Acting Director of Watershed Management at DEP) did a presentation on TMDL's. The text of this presentation will be sent to the members as an attachment to the September 10, 2002 meeting minutes. You will have to open it in powerpoint. Following the presentation there was a question and answer period.

L.Mason Neely,(Twp. of E. Brunswick), asked how does lake TMDL's and phosphorus compare with the proposed rule on phosphorus using the limit 0.1mg/L. If it is a statewide mandate and you are looking at this regionally, how do you do both?

Deb Hammond – Water criteria for a stream is currently listed as .1mg/L. If a stream is impaired, the concept behind point source effluent limitation is that you should discharge that criteria. Commissioner decided to implement .1mg/L on Treatment Plants. In lakes the criteria for phosphorus is .05 mg/L and we may have to reduce that number even further.

Mr. Neely – asked how do we deal with Mother Nature affecting streams and lakes?

Deb Hammond replied that the standards allow for natural background conditions to be established. You can set natural background as a water quality standard. Unfortunately, it is a tough test to show that it is a totally unimpaired environment. Looking at the fecal approach, the focus is on swimmable and permanent contact recreation and achieving that result. Some of our monitoring stations may be directly downstream from a wildlife management area. One approach could be to kill the animals. Another approach would be to remove the use of permanent contact recreation away from the stream segment because the treatment is worse than the results. We are allowed to make these kinds of findings through the TMDL process. We are doing the Land Use, GIS, co-efficient loading approach because most of the work will be focused on non point sources. We do not have a situation where point source Treatment Plants are discharging into the lakes. The MOA will be posted as soon as Region 2 signs it. We are now working on the integrated listing schedule. We posted it in May, 2002. It went to public hearing, resulting in some comments. The Department decided to repropose the list. The reproposal was issued on August 5th with closing on September 4th. We are looking to submit our list to EPA and have them approved Category 5 and submit them October 5th.

Marybeth Koza – Has DEP looked at limiting Phosphorus in fertilizers? (the kind people use for their lawns)

Deb Hammond – We are not there yet, but with the lake TMDL's and limiting sources, that is where we are headed. People like to use fertilizers to have nice lawns. We are putting down way too much fertilizer! The expectation is that non point source action is going to require Municipalities to look at these types of things.

Mr. Neely commented that if he understood correctly, it would be easier to regulate Municipalities than to deal with the companies or the manufacturers. If you mandate to the Municipalities, it is just passing it off to the taxpayers as a hidden cost and not dealing with the issue. Since the State has the authority to deal with the issue through the suppliers and the companies, this would seem to be a much better approach.

Deb Hammond – EPA is mandating the State establish TMDL's. Mr. Neely's point is well taken. We should not only be rationing down on Treatment Plants, but going back and taking a much more holistic approach on the industry. We know one of the biggest problems is fertilizers.

Amy Goldsmith (NJ Environmental Federation and Clean Water Fund) There is a precedent in NJ to change production patterns. Look at the NJ Mercury Battery Bill. NJ said no more Mercury batteries and that changed an industry! NJ has the ability to do that. There have been many changes in the golf course industry and lawn care industry, but it has not translated over to the homeowner's side. The numbers have gone down on the pesticide side but not on the homeowner's side. The education has not been done!

Mr. Neely – Put at the Municipal levels, stormwater aspects will be required of the Municipalities. Is that the primary approach that you that you (DEP) are taking as opposed to looking at the industries that produce the products by asking them to change their product mix?

Deb Hammond – Yes.

Helen Heinrich (NJ Farm Bureau) – The reason for this conclusion is that how much fertilizer you need is very site specific and perhaps the Municipalities can figure out what would be more publicly acceptable than going after the fertilizer companies and having them produce even fewer percentages.

Pam Goodwin - It is important that you do not forget the consumer issue. Offering consumers an option may be the way to go.

James Cosgrove (OMNI Environmental Corp.) – In Rhode Island, Univ. of R.I. has done studies on the sandy soils in R.I. averaged them out, and have come up with a fertilizer blend that is appropriate and that lots of people use.

Marybeth Koza – VOC regulations came down from EPA, who went to the aerosol manufacturers and limited VOC's in personal care products. They have influenced the consumer at the consumer level very effectively. In talking about individual fertilizers, I believe there should be some type of limit or requirement on that product when you purchase it.

Deb Hammond – The water program is very site specific as to what the problems and solutions are. EPA has left it up to everyone to figure out what works for their area.

Helen Heinrich – suggested that CWC write a letter to the Secretary of Agriculture, and the Dean of Cook College, and say that Phosphorus is becoming a major concern and that there will have to be some kind of regulation in order to stop the undisciplined approach of Phosphorus used on lawns, etc. There is a new water quality specialist at Rutgers that should be involved in this question. Ask if they can get together and look into the fertilizer industry and what can be done about it using the Univ. of R.I. as a model.

Mr. Neely – A good question to ask the Commissioner at next month's meeting, would be "Why are you putting cost on Municipalities when it could be taken directly to the industries?" If you are going to spend the money to go in a direction, the most effective way would be industry-wide.

Helen Heinrich did not agree because it is very complicated. We are talking about both agriculture and lawns.

Amy Goldsmith – Lawns use more fertilizer than agriculture does.

Ray Zabihach (Morris Co. Planning Dept.) – We should not take the position of an “all or nothing” approach. DEP is in the forefront of molding regulation and permitting processes. You cannot do one rule and one permit that will cover everything. We have to have flexibility. The farming industry has a concern about Phosphorus. In the TMDL process, where agriculture is not everywhere, people are putting Phosphorus on their lawns. The Municipality is not going to regulate farming, it is going to regulate site specific areas. Farmers do not use the same fertilizers for their crops as people use on their lawns. DEP has to take the lead to say to the Legislature that we are going to have to have this type of Phosphorus regulation. Here’s the formula that affects fertilizers and application on lawns, which is the major non point source of pollution concern, and these are the suggestions we got from the Dept. of Agriculture in how we handle Phosphorus in agriculture. If the manufacturers change their product, the consumer will not have a choice in having a 100% Phosphorus in their fertilizer. If the Legislature sets a specific safe level of Phosphorus in fertilizer, which a manufacturer cannot exceed, that should take care of competitive choices. I think that is where we have to go.

Dan VanAbs (NJ Water Supply Authority) – Where is the money coming from to do the TMDL’s? How is this going to get funded?

Deb Hammond – Right now there is money for contracting, close \$2 million. How much money we need depends on what work we are actually doing. We have CBT funds that could be allocated through the Department. The Federal 319 funds are expected to be utilized for non point source TMDL development. My answer is, I think so. But if not, we will be hounding EPA.

Dan VanAbs – To what extent do you expect people from outside of the Department to be asked or be required to put resources into the TMDL development? Will we use the Passaic model or something else?

Deb Hammond – Dischargers will have to prove that they are not contributing to the problem. If they can’t do this, they are on the hook. The next step will be the TMDL’s. It’s very possible that dischargers will have to contribute. How we will do that, I’m not really quite sure. I would recommend that we have a dedicated fund and that the monies go to this fund and be spent from this dedicated fund. Sending the money to Treasury doesn’t insure getting it for the work needed to get done.

Helen Heinrich – What role does the EcoComplex TMDL group play?

Deb Hammond – EcoComplex is headquartered in Burlington Co. It’s an academic organization, for us, an arm of Rutgers. They serve three functions for us. 1) Academic team comprised of University professors who review our approach, give us some academic feedback and give ideas for each project. 2) They are actually a contract manager. They do scope of work and keep track of monies. They also give us technical feedback, as they are more experienced with research proposals. 3) They streamline our contracting business. We have identified some research projects, where we don’t know who we want to hire and are putting out RFP’s. EcoComplex will review the RFP’s and recommend the best choices and then the Department will take it from there. We were able to convince the Commissioner to appropriate additional funds to pay for work needed this year.

Pam Goodwin – Where does Smart Growth fit in with the TMDL process?

Deb Hammond – TMDL’s are really an action for remediation on impaired waters. Whether it has a role in Smart Growth, I’m not sure. It’s more of a reactive measure rather than a proactive one. Although, we believe we can use TMDL’s as a proactive measure to help us. As we are doing TMDL’s, we have to look at what’s the vision and the growth for the area. If you are developing an area with good ordinances and good site plan development, which you can do on a local level, you can offset any impacts that the development might bring and that would be looked at as a TMDL.

Dan VanAbs – Current regulation requires Technical Advisory Committee (TAC’s) either for each TMDL or for groups of TMDL’s. The Department is significantly shifting gears in it’s approach in regards to Watershed Management area planning. How do those things fit together?

Deb Hammond – We have to have some kind of public process. We have a lot of TMDL's that we will need to roll out. Some of these will go to the PAC's. The expectation is that they will go to the PAC meetings to present what we are doing and to give them an opportunity to understand the process. If there is a TAC, they will meet with the TAC. Each area is different. Some are a lot more sophisticated than others. Right now that is the plan.

Dan VanAbs – How are the PAC's and TAC's going to stay in existence if there is no one continuing the process?

Deb Hammond – People that are interested will be there because they are concerned with the outcome. I think the process will continue because of public interest.

Marybeth Koza – Concerning the education process in the Municipalities and the Environmental Commission, I think when you do TMDL's on the local level, you should also involve the local Environmental Commission, so they can learn the process.

Helen Heinrich – what happens if you don't meet the deadline?

Deb Hammond – Our expectation is that we hope we are successful and that we allow the Department to look better in the eyes of the Nation. The discussion that is going on, is that this does not seem to be the best way to get to water quality improvement and that there are other ways that may be more effective. But the Clean Water Act specified TMDL's, so we have to do them.

Tony Russo(Chemistry Council of NJ) – Are you starting to see more companies doing antidegradation studies?

Deb Hammond – If you are coming in for an increase in your permit loading, you are required to do antidegradation. Dischargers will be asked to do that.

Mr. Neely - Are we to receive a copy of the TMDL presentation and also a copy of the signed agreement? When will that be signed?

Deb Hammond – Yes. It should be signed by EPA by September 30th.

Helen Heinrich – Will a list of the sites be attached to the MOA?

Deb Hammond – Yes. It is part of the MOA. Actually, right now they are focusing on the non-tidal streams in the Northeast. Then they will walk around the State.

Todd Kratzer (DRBC) – What educational methods are being used? Media? Website?

Kerry Kirk Pflugh (Raritan Bureau Chief at DEP) – The education that we are doing is using the structure that is currently in place, going to the stakeholders that we are in touch with at this point. I have proposed that we need to think about a statewide education and outreach effort. That hasn't happened yet.

Todd Kratzer – You really have to have everybody on board to make it work. I have seen it in the Media.

Deb Hammond – The new administration is definitely more proactive with the Press. We are really trying to get a lot of information out to the public.

Mr Neely – Can we go to item #4 on Agenda, the Phosphorus letter?

Phosphorus Letter Discussion

Pam Goodwin – Did everyone receive the latest draft of the Phosphorus letter?

Mr. Neely – I think we should sign letter #2 and send it.

Russell Furnari (PSE & G)- The revised version of the letter was passed out today. Over the summer I received comments sent by a number of people in our group and decided to integrate those comments into the letter. I put the Watershed stuff up front and used that to lead into the Phosphorus issue. On the front piece of the letter, including the bullets, are items and things that came out of the Watershed comments from a number of people on the Council. I thought it might be a better way to present the issue to the Commissioner.

Pam Goodwin - She suggested we take a break and read over both drafts of the letter and make comments.

Amy Goldsmith – She preferred draft #2 and felt it was appropriate to talk about the Watershed process and problems. It's better to talk about "common ground" to start with. I don't think the bullet points add anything and are needed. This Phosphorus rule has been on the books but nobody has enforced it.

James Cosgrove – 0.1 for the dischargers has certainly not been on the books. 0.1 for streams has been on the books for years.

Amy Goldsmith – I agree that there should be a TMDL for Phosphorus and if there is a recommendation for a time frame or putting it in the context of a MOA, I would think that would be appropriate. This letter seems to be saying "don't take me case by case, permit by permit" just go to the Watershed plan. I do not think that is what we want to say.

Marybeth Koza – CWC needs to take a role in Smart Growth as well as surface water issues. I just would not like to see this letter dismissed by the Commissioner. This group needs to step up to the plate and play a bigger role in the issues we have talked about.

Kerry Pflugh – I would have to agree. In reading the letter (#2), the tone seems very adversarial. Draft #1 seems more technical and less political. As a Council, you want involvement in whatever the process is. You are technical people with a lot to bring to the table. The Commissioner has made himself very clear on certain issues. We are not renewing contracts for WMA's and the whole public process will be fundamentally changed. We are shifting to a more regulatory approach. The litigation comments in the letter almost come across as a veiled threat. As a Council that is supposed to be supporting and working with your Commissioner and advising him, you are not setting that tone with this letter.

Deb Hammond – The discussion we were having earlier about the other ways to address Phosphorus is really what belongs in this letter. You all acknowledge very strongly that it is really consumer changes that are needed because there is so much non point source contribution.

Kerry – I would go further in saying that it is a shared responsibility in this process and that the manufacturing approach isn't exclusive of what Municipalities need to do. I think there is a role for manufacturers, citizens, Municipalities, Watershed Assoc., and for dischargers. Those roles need to be clearly delineated and defined and perhaps that is something you would want to discuss.

Mr. Neely – The changes in the Phosphorus requirements is going to shift significant cost onto Treatment Plants as the process goes along and in fact, has zero impact or minimal impact on the stream for the amount of dollars spent. Is that the best approach to deal with the Phosphorus issue? In some cases there is no eutrophication of the streams and the Phosphorus levels already exceed your level. Should you treat something that is a symptom when it's not a cause? Jim Cosgrove did a good job on drafting the first letter. There is a lot of money that can be spent by the MUA's to deal with this proposed requirement that is new. Even though the streams have had it, it has not been implemented on the permitting process. I think those funds might be better allocated in the broader TMDL aspect. The letter does not seem to be adversarial, but it does give our advice.

Ray Zabihach – We have an opportunity to let the Commissioner know that we exist and this is our advice to him. We have to make it clear that this piecemeal approach is never successful. It usually leads to

litigation. Whether we choose Phosphorus letter 1 or 2, today's discussion should be incorporated because it is a possible solution. Our intent is to have results. We should be seeking a process. Our goal is to reduce Phosphorus and we should be seeking the process that does that in an efficient and low cost manner. This seems to be a costly process and will create problems. The implementations of this process will be horrendous and it's not going to achieve reducing Phosphorus. We have to look at it from the larger scale and say "here are some other options".

Deb Hammond – Just a fact to share. Except for the Passaic River Basin, there were more streams listed impaired for Phosphorus without Treatment Plants than were listed with Treatment Plants. It proves that going after Treatment Plants only deals with a portion of the problem.

Ray Zabihach – With this new initiative, a bigger burden will be put on the Treatment Plants. Evidence proves that they are not the major source of Phosphorus and that they have been doing something. But pinpointing and identifying them as the only way you will solve the problem is not the way the way to go. Nothing will be done but legal action.

Mr. Neely – If we are going to force people to spend money, then let's spend the money most judiciously and get something accomplished and this is not the way to do that. The letter is neutral and gives us a great point for next month. If we don't get the letter out, we will have missed our opportunity.

Marybeth Koza – This letter does not cover what we have just discussed today. There are other avenues to go after. As CWC we recognize the point source issue. I cannot vote on either letter. One has Watershed issues and neither has what we discussed today. I suggest that the letter be edited to support what we discussed today.

Kerry – The Commissioner is aware of CWC's existence. He does not fully understand how CWC can be of help to him and how he might work with CWC. I'm trying to set us up in a positive light so he does not see us as a group of people he has to have an argument with.

Russell Furnari – The information you are providing, the number of waterbodies actually impacted by Treatment Plants, is not common knowledge. No one has ever said who will actually be impacted by this. It's not everybody, it's a small number.

Deb Hammond – She suggested giving the Commissioner new information and that the discussion held this morning was right on target.

Dan VanAbs – Trim down the letter and don't repeat the obvious. We should put bullets right up front in the letter saying what we propose in the letter. Then follow with an explanation of those bullets. Then all the Commissioner has to do is read those bullets to know what's in the rest of the letter. He can react positively or negatively, but at least he will know what's in the rest of the letter. I think that will get attention paid to the letter.

General Discussion

Barry Sullivan (Dept. of Community Affairs) – CWC has been supporting Watershed Management for a number of years and if the direction is to move away from Watershed Management (removing that part of the letter supporting Watershed Mgmt.), then we have to emphasize to the Commissioner that this is something we support and anything that is being done be looked at in terms of a Watershed Management approach. If we move away from Watershed Management it is a major change in what this Council has been thinking about for a number of years.

Mr. Neely – The decision has been made. They have moved away from it. The funds are going away from it. The whole approach is being changed. It's going to be a different process. He has already determined how the process is going to go.

Amy Goldsmith – The money is in a dedicated fund as opposed to the CBT.

Dan VanAbs – There is a distinction between Watershed based management and doing Watershed based management in a specific way. It is perfectly valid for the Council to say that we have always been in support of Watershed Mgmt. That's different from saying the Watershed Mgmt. Area based planning process, which resulted in conflict in management plans. That's a specific method of doing them.

Pam Goodwin – There seems to be differences of opinions in what should go into this letter. Because our meeting with the Commissioner is in October and there is more to be discussed about whether to include or not include the topics discussed today, it might make sense to have our meeting to discuss the issues and send this letter as a follow-up letter to our meeting. At the same time we will have a sense of the Commissioner's reaction and we may have a better idea of where we stand as CWC.

Tony McCracken (Somerset Planning Board) – I personally think TMDL's are a great way to do Watershed approach. I think this letter is basically well written. I don't like the idea of going back to a permit by permit thing. We should let people know how we feel. We should be looking holistically at this, looking at coming up with TMDL's. I agree with Amy that we need to say further up in the letter that TMDL's is the way to do it. We should not be looking at this individually on a permit by permit basis. There are so many other contributions to a treatment facility that you can't just look at the Phosphorus issue specifically.

Ray Zabihach – I agree with sending the letter as a follow-up to the meeting. But at this time, I would like to add a caveat stating that in the event we do not meet with the Commissioner as planned, that we formulate a letter at that meeting and send it out. If we do meet with the Commissioner, in our question and answer exchange, we can express a lot of these issues and then send the letter as a follow-up to the points that were raised. That may even be less threatening.

Kerry – In light of the fact that we may be delaying this letter until after our meeting, I would like to suggest that we put together an agenda of topics that we want to discuss with the Commissioner.

Russell Furnari – Because of the e-mailing back and forth between members some of the information was not getting to all the members. He suggested all comments be sent to Ursula and that she would then send them on to the members.

DEP Update Report

Pam Goodwin – Called for an update on the status of the Department.

Kerry – The Commissioner met with the Bureau Chiefs and with staff late last month and went through the initiatives and how he feels the Watershed Program will be moving in the future. We are still without an Administrator for the Watershed Program. The name has gone over to the Governor's office as of Thursday of last week. We expect to know soon. Deb Hammond will not be taking on the Administrator position. The Commissioner did outline nine initiatives that he would like us to work on in the coming years:

1. To engage each area in designating water segments for special protection.
2. Aggressively push Municipal codes to focus on Water Quality protection for example, through Municipal Ordinances.
3. Push for a pollution reduction on impaired waters through initiatives like the Phosphorus initiative and the development of TMDL's.
4. Strengthen the partnership with the Dept. of Agriculture.
5. He will be issuing the new Stormwater rules any day now. That is going to be a huge initiative with major ramifications.
6. Focusing on restoration of impaired waterways and seeking natural resource damage claims where it's appropriate to do so.
7. To build on infrastructure such as, State Plans, Smart Growth, C 1 Initiatives, Open Space Initiative and also designation of areas for special protection.
8. To replace Septic Rules with some type of a rule that would integrate the EO109 Analyses in the description, so that people would know up front what is expected of them.

9. Internally, he wants the Land Use and Water Programs to coordinate more effectively.

These points are also in the July 30th Raritan Basin Council meeting minutes, which are on the website – raritanbasin.org

Commissioner Meeting

Pam Goodwin – We need to discuss the agenda for the topics of discussion for the Commissioner at our October 11th meeting.

Mr. Neely – Made a motion to approve the minutes from our July meeting so they will be official. Ray Zabihach seconded the motion. It was voted on and passed.

Amy Goldsmith – Are we meeting on October 8th as well as October 11th?

Pam Goodwin – No, we will meet only on October 11th, in the Commissioner large conference room. He will speak to us from 10 am – 11 am.

Marybeth Koza – What was the reason for meeting with the Commissioner?

Kerry – The objective for having this meeting was to have the Commissioner be aware of the CWC, how we operate, how we can provide guidance and advice to him as he goes forward on water based issues. Because space in the Commissioner's conference room is limited, we will have to ask only that CWC members attend the meeting.

Mr. Neely – Moved that we do not invite everybody, but besides the CWC members, we invite only those who have been actively participating in the meetings. Ray Zabihach seconded the motion. It was voted on and passed.

Marybeth Koza – We need an outline on how to present to the Commissioner at the meeting.

Kerry – I propose that we meet an hour before, (at 9:00 am) the Commissioner's meeting at 10:00 am to discuss who will speak on what topics, etc. I will do a two minute speech about what the CWC is and its purpose and how long it's been in existence. Then everyone can introduce themselves and who they represent and go from there.

Tony McCracken – We should stick to just a few topics.

Pam Goodwin – I will meet with Kerry and make sure that Pat M. does as well, to strategize with respect of the formulation of the comments and an outline of the proposed introduction. We will e-mail those to everybody in advance of our getting together so you will have something to think about.

Motion to adjourn meeting was made, seconded and passed.